

JOHN S. THRASHER.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Information respecting the imprisonment, &c., of John S. Thrasher.

DECEMBER 23, 1851.

Referred to the Committee on Foreign Affairs, with instructions to examine into the laws of domicile in the island of Cuba, and to see if they are not proper matters for negotiation and treaty. Ordered to be printed.

To the House of Representatives :

In answer to the resolution of the House of Representatives of the 15th instant, requesting information in regard to the imprisonment, trial and sentence of John S. Thrasher, in the Island of Cuba, I transmit a report from the Secretary of State, and the documents which accompanied it.

MILLARD FILLMORE.

WASHINGTON, December 23, 1851.

DEPARTMENT OF STATE,

Washington, December 23, 1851.

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 15th instant, in the following words :

“Resolved, That the President of the United States be requested, so far as in his judgment may be compatible with the public interest, to communicate to this House, any information in possession of the Executive, respecting the imprisonment, trial and sentence of John S. Thrasher in the island of Cuba, and to his right to claim the protection of the Government as a native-born citizen of the United States,” has the honor to report to the President, that all the official information in possession of this Department, respecting the imprisonment, trial and sentence of Mr. John S. Thrasher, is contained in the despatches of Allen F. Owen, Esquire, late United States consul at Havana, together with a correspondence between him and the Governor-General of the island of Cuba, and in a letter addressed by the Governor-General to Don A. Calderon de la Barca, her Catholic Majesty's minister in the United States, copies of all of which are herewith transmitted.

There is no doubt that John S. Thrasher is a citizen of the United States by birth, nor is there any doubt that he has resided in the island of Cuba for a considerable number of years, engaged in business transactions, sometimes as a merchant, and sometimes as the conductor of a newspaper press; although the precise period and duration of such residence are not known. On this point the Department has sought in vain for exact information. Mr. Thrasher himself has made no communication to this Department, although he has, through the press, addressed a general letter of remonstrance to the Government and people of the United States.

In the letter from the Governor of Cuba to her Catholic Majesty's minister in the United States, already mentioned, it is stated that he has been not only a resident in Havana for a considerable time, but domiciled there by regular proceedings, and that he has in solemn form sworn allegiance to the Spanish crown.

There is no evidence in the possession of the Government to show, what was his purpose with regard to his returning to his native country, at any fixed or definite time. Other members of his family are understood to be, like himself, residents in Cuba—his father having gone to that island some years ago.

These are all the known general facts respecting the nature of his residence in Havana which have come to the knowledge of this Department.

It appears that soon after the failure and breaking up of the late expedition of Narciso Lopez, in the invasion of Cuba by him and the troops under his command, Mr. Thrasher was arrested and tried for high treason or conspiracy against the crown of Spain; condemned to eight years imprisonment to hard labor, and sent to Spain in execution of that sentence.

There is no evidence in the Department to show what were the particular acts of treason or conspiracy alleged or proved against him. We have only the general statement, although pains have been taken to ascertain particulars.

The first general question then, is, as to his right to exemption from Spanish law and Spanish authority, on the ground of his being a native-born citizen of the United States.

The general rule of the public law is, that every person of full age has a right to change his domicile; and it follows, that when he removes to another place, with the intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile; and this is so, notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period.

The Supreme Court of the United States has decided, "that a person who removes to a foreign country, settles himself there, and engages in the trade of the country, furnishes, by these acts, such evidences of an intention permanently to reside in that country, as to stamp him with its national character;" and this, undoubtedly, is in full accordance with the sentiments of the most eminent writers, as well as with those of other high judicial tribunals on the subject. No government has carried this general presumption farther than that of the United States, since it is well known that hundreds of thousands of persons are now living in this country, who have not been naturalized according to the provisions of law, nor sworn any allegiance to this Government, nor been domiciled among us by any regular course of proceedings. What degree of alarm would it not give to this vastly numerous class of men, actually living among us as inhabitants of the United

States, to learn that, by removing to this country, they had not transferred their allegiance from the governments of which they were originally subjects, to this Government? And, on the other hand, what would be the condition of this country and its Government, if the sovereigns of Europe, from whose dominions they have emigrated, were supposed to have still a right to interpose to protect such inhabitants against the penalties which might be justly incurred by them, in consequence of their violation of the laws of the United States? In questions on this subject, the chief point to be considered is the *animus manendi*, or intention of continued residence; and this must be decided by reasonable rules and the general principles of evidence.

If it sufficiently appear, that the intention of removing was to make a permanent settlement, or a settlement for an indefinite time, the right of domicil is acquired by a residence even of a few days.

It is undoubtedly true, that an American citizen who goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of his own government; and if, without the violation of any municipal law, he should be treated unjustly, he would have a right to claim that protection, and the interposition of the American Government in his favor, would be considered as a justifiable interposition. But his situation is completely changed, when, by his own act, he has made himself the subject of a foreign power. And a person found residing in a foreign country is presumed to be there *animo manendi*, or with the purpose of remaining; and to relieve himself of the character which this presumption fixes upon him, he must show that his residence was only temporary, and accompanied all the while with a fixed and definite intention of returning. If in that country, he engages in trade and business, he is considered, by the law of nations, as a merchant of that country; nor is the presumption rebutted by the residence of his wife and family in the country from which he came.— This is the doctrine as laid down by the United States courts. And it has been decided that “a Spanish merchant who came to the United States, and continued to reside here and carry on trade, after the breaking out of war between Spain and Great Britain, is to be considered an American merchant, although the trade could be lawfully carried on by a Spanish subject only.” But the necessity of any presumption in Mr. Thrasher’s case is entirely removed, if, in fact, he actually took out letters of domiciliation, in order to enable him to transact business such as a Spanish subject or a domiciliated foreigner can alone transact, and actually swore allegiance to the Spanish crown.

For the purpose of showing the mode by which foreigners are domiciled in the island of Cuba, and the duties thereby imposed upon them, and also, by what means they obtain the ultimate right of naturalization, I have thought it worth while to quote at length a translation of the royal decree of January 17, 1815, and also the royal colonization decree of October 21, 1817. It is understood that no change has been made by royal decrees in the requirements of the Spanish law of domicil and naturalization since the last of those periods.

“All foreigners belonging to powers and countries that are friendly to me, who may wish to establish themselves, or who may already be established in the island of Cuba, must produce suitable evidence before the government of said island, that they profess the Roman Catholic religion; and, without this indispensable qualification, they will not be allowed to become domiciled there; but my vassals, in these dominions, and those in-

habiting the Indies, need not be compelled to certify to this effect, inasmuch as, in regard to them, there can be no doubt upon this point."

"Those foreigners, who shall be admitted conformably to the provisions of the foregoing article, shall take the oath of allegiance and vassalage before the Governor, by which they shall promise to obey the general laws and ordinances of the Indies, to which all Spaniards are amenable."

"At the expiration of the first five years of residence in the island, on the part of foreign colonists, and on their contracting then the obligation to remain there perpetually, they shall be allowed all the rights and privileges of naturalization, equally with such children as they may have brought with them, or who may have been born to them in the aforesaid island, in order that the same may consequently be allowed to hold honorable offices, both civil and military, according to the talents of each individual."

The same decree also provides that "a foreigner may reside in Cuba for the period of three months, without letters of domicil," but that on his remaining there, without such letters, beyond the time specified, "he becomes guilty of disobedience to the laws, and amenable to such just punishment, as after a close examination of the cause may be imposed upon him."

Upon the same subject, and in corroboration of the above, the Royal Colonization Decree of October 21st, 1817, says, "that letters of domicil shall be issued to any foreign colonist, who professes the Roman Catholic religion, and takes the oath of allegiance, by means of which, during five years of residence, it shall be optional with him either to return to his old country, or to present himself before the Superior Magistrate, at the expiration of those five years, for the purpose of obtaining his *naturalization papers*, which will be granted to him without any great formality, in order that, on being thus naturalized, he may enjoy all the rights and privileges appertaining to Spaniards, as well as his sons and legitimate descendants."

On the 6th of March, 1818, the Governor-General, in view of the above mentioned Royal Decree of October 21st, 1817, issued a Bando Real, in which it is provided, that, "in the absence of the requisite qualification, in regard to the profession of the Catholic faith, the fact shall be noted down in the letter of domicil, which will then be issued on probation for the term of two years. If, at the expiration of those two years, the applicant cannot produce satisfactory evidence of his professing our sacred religion, the letter of domicil shall be taken away from him, and he will then be considered in the light of merely a transient foreigner, and, as such, be compelled to leave this island, at the expiration of three months, in pursuance of the 28th article of the Royal Decree."

But, independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that, by the public law, an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason, or other crimes, as a native-born subject might be, unless his case is varied by some treaty stipulations; but this duty of obedience to the laws, arising from local and temporary allegiance, ceases, of course, the moment he transfers himself back to his original country.

An American citizen, by birth, owing of course a native allegiance to the United States, going abroad and obtaining no residence under a foreign government and professing to such government no allegiance, and who should

yet commit acts of hostility or war against this country, would seem to bring himself within the act of Congress which declares, that if any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, he or they shall be adjudged guilty of treason. And the reason is plain, since his allegiance in such a case is original and native, and has not been transferred nor lost in any other local allegiance arising from a residence elsewhere, but continues to be the primitive tie which binds him to his country.

But, as has been already said, every foreigner-born, residing in a country, owes to that country allegiance, and obedience to its laws so long as he remains in it, as a duty imposed upon him by the mere fact of his residence and the temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilized States, and nowhere a more established doctrine than in this country.

Mr. Jefferson, when Secretary of State, in his letter to Gouverneur Morris of the 16th of August, 1793, speaking of the right of private citizens to make war with a country with which the Government of the United States is at peace, says, "If one citizen has a right to go to war of his own authority, every citizen has the same. If every citizen has that right, then the nation (which is composed of all its citizens) has a right to go to war by the authority of its individual citizens. But this is not true either on the general principles of society or by our constitution, which gives that power to Congress alone, and not to the citizens individually. Then the first position was not true; and no citizen has a right to go to war of his own authority; and for what he does without right he ought to be punished. Indeed, nothing can be more obviously absurd than to say, that all the citizens may be at war and yet the nation at peace."

"It has been pretended, indeed, that the engagement of a citizen in an enterprise of this nature was a divestment of the character of a citizen and a transfer of jurisdiction over him to another sovereign. Our citizens are certainly free to divest themselves of that character by emigration, and other acts manifesting their intention, and may then become the subjects of another power and free to do whatever the subjects of that power may do. But the laws do not admit that the bare commission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their coercion. They would never prescribe an illegal act among the legal modes by which a citizen might disfranchise himself; nor render treason, for instance, innocent by giving it the force of a dissolution of the obligation of the criminal to his country."

This is in accordance with the opinion of the circuit court of the United States for Pennsylvania, by which it was stated in 1793, that, "If one citizen of the United States may take part in the present war, ten thousand may. If they may take part on one side, they may take part on the other; and thus thousands of our fellow-citizens may associate themselves with different belligerent powers, destroying not only these with whom we have no hostility, but destroying each other. In such a case can we expect peace among their friends who stay behind? And will not a civil war, with all its lamentable train of evils, be the natural effect?"

Our citizens who resort to countries where the trial by jury is not known,

and who may there be charged with crime, frequently imagine, when the laws of those countries are administered in the forms customary therein, that they are deprived of rights to which they are entitled, and therefore may expect the interference of their own Government. But it must be remembered, in all such cases, that they have of their own freewill elected a residence out of their native land, and preferred to live elsewhere and under another government, and in a country in which different laws prevail.

They have chosen to settle themselves in a country where jury trials are not known, where representative government does not exist, where the privilege of the writ of *habeas corpus* is unheard of, and where judicial proceedings in criminal cases are brief and summary. Having made this election, they must necessarily abide its consequences. No man can carry the ægis of his national American liberty into a foreign country, and expect to hold it up for his exemption from the dominion and authority of the laws and the sovereign power of that country, unless he be authorized so to do by the virtue of treaty stipulations.

The definition of crimes—the denouncement of penalties for their commission, and the forms of proceeding by which guilt is to be ascertained, are high prerogatives of sovereignty, and one nation cannot dictate them to another without being liable to the same dictation herself.

The friends of Mr. Thrasher interpose in his behalf the seventh article of the treaty of 1795, which declares that in all cases of offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be prosecuted by order and authority of law only, and according to the regular course of proceeding in such cases. They shall also be allowed to employ such advocates as they may judge proper before the tribunal of the other party, who shall have free access to be present at the proceedings in such causes, and at the taking of all examinations and evidence which may be exhibited in the said trials.

As the public law, however, does in no case impart to foreigners residing in any country privileges which are denied to its own citizens or subjects, except, perhaps, that of leaving the country, it may be thought doubtful, whether by the article of the treaty referred to, the parties could have contemplated any more than to place citizens of the United States, within Spanish jurisdiction, on an equality with Spanish subjects, and Spanish subjects in the United States on an equality with our own citizens in criminal proceedings.

A citizen of Spain in this country might, perhaps, complain of a trial by jury here because of the supposed partialities and prejudices of juries, while an American in Spain complains of condemnation, in summary form, by judges without the intervention of a jury to ascertain his guilt. The question arising on the latter clause of this seventh article of the treaty with Spain may not be entirely clear or free of difficulty, especially when it is known that the minister who negotiated this treaty on the part of the United States, appears to have attached considerable importance to this right of selecting and employing counsel. Mr. Thomas Pinckney, "the American negotiator, says in a letter on the subject of the treaty, that the first part of this seventh article was taken from the sixteenth article of our treaty with Prussia, and that he added the latter part because he considered it a good stipulation in all situations, but particularly in Spain."

We can readily imagine why it should have been stipulated in the treaty that the trial of an American citizen in Spain should be open and public,

because we know that as late as the year 1795 there existed in Spain an ecclesiastical jurisdiction having power over life and death, whose proceedings were always secret. Whether it was intended by the parties that this right of selecting counsel in the case of the arrest or the trial of an American citizen for treason, or other crime against the civil law, should extend further, or be broader, than in the case of a Spanish subject prosecuted for a similar offence, may be matter of doubt and controversy. The view which the Spanish courts of the highest jurisdiction take of it, may be seen by the communication of the royal court of judicature, accompanying the letter of the governor-general to Mr. Calderon. But however all this may be, the general question still returns, whether this right, secured by treaty, whatever it is, be not justly limited to such persons as are, at the time, in all respects, American citizens, having never voluntarily changed their domicil, or taken upon themselves a new allegiance.

In this view of the case, it might therefore be asked whether, if Mr. Thrasher had been a native-born subject of her Catholic majesty, his trial and its result would have been different from what they actually were.

If, indeed, Mr. Thrasher, in his arrest and trial, did not enjoy the benefits which native-born Spanish subjects enjoy in like cases, but was more harshly treated or more severely punished, for the reason that he was a nativeborn citizen of the United States, it would be a clear case of the violation of treaty obligations, and would demand the interposition of the Government. There exists in this Department no proof of any such extraordinary treatment of Mr. Thrasher. It may have taken place. In the absence of all other information, reference is made on that point, as well as to all the rest of the case to the letter of the Governor-General of Cuba to Mr. Calderon, her Catholic Majesty's Minister Plenipotentiary to this Government.

For the further information of the House of Representatives, I also transmit, herewith, a copy of the despatch of the 13th instant, from this Department to the Minister of the United States at Madrid, and of despatches to the acting Consul at Havana of the 12th and 28th of November last.

DANIEL WEBSTER.

LIST OF PAPERS

ACCOMPANYING THE REPORT OF THE SECRETARY OF STATE TO THE PRESIDENT, OF DECEMBER 23, 1851.

- Mr. Owen to Mr. Webster, October 17, 1851.
 Translation of Mr. Owen's Exequatur.
 The Marquis of Miraflores to Mr. Barringer, (translation,) August 20, 1851.
 Mr. Owen to Mr. J. J. Crittenden, acting Secretary of State, October 29, 1851.
 The same to the Captain-General of Cuba, October 23, 1851.
 The Captain-General of Cuba to Mr. Owen, (translation,) October 25, 1851.
 Mr. Owen to Mr. Webster, November 15, 1851.
 The same to the same, November 17, 1851.
 The same to the same, November 25, 1851.
 Mr. Thrasher to Mr. Owen, November 7, 1851.
 The same to the same, November 8, 1851.
 The same to the same, November 15, 1851.
 The same to the same, November 15, 1851.
 Mr. Owen to the Captain-General of Cuba, November 12, 1851.
 The same to the same, November 15, 1851.
 The same to the same, November 16, 1851.
 The same to the same, November 21, 1851.
 The Captain-General of Cuba to Mr. Owen, (translation,) Nov. 10, 1851.
 The same to the same, (translation,) November 23, 1851.
 The same to the same, (translation,) November 23, 1851.
 Mr. Owen to Mr. Webster, November 27, 1851.
 The same to the Captain-General of Cuba, November 23, 1851.
 The Captain-General of Cuba to Mr. Owen, (translation,) Nov. 25, 1851.
 Mr. Webster to the Consul of the United States, at Havana, Nov. 12, 1851.
 The same to the same, November 28, 1851.
 The same to Mr. Calderon, December 8, 1851.
 Mr. Calderon to Mr. Webster, December 11, 1851.
 The Captain-General of Cuba to Mr. Calderon, November 28, 1851.
 Mr. Webster to Mr. Barringer, December 13, 1851.

Mr. Owen to Mr. Webster.

[No. 25.]

CONSULATE OF THE UNITED STATES,
Havana, October 17, 1851.

SIR: I have the honor herewith to send you copies of the Exequatur, and of the letter of the Minister of State of Spain to the Minister of the United States at Madrid, with a translation of the latter, defining the powers which the Exequatur will permit the consul to exercise.

The Exequatur was delivered to me on the 12th instant, with the signature of the Governor and Captain-General, and I began to act under it on the 13th.

With great respect, I have the honor to be, sir, your obedient servant,
A. F. OWEN.

HON. DANIEL WEBSTER,
Secretary of State.

Mr. Owen's Exequatur.

[Translation.]

DONA ISABEL, THE SECOND,

By the grace of God and the constitution of the Spanish monarchy,
Queen of Spain:

Inasmuch as the minister plenipotentiary of the United States has reported that the President of said republic has appointed Mr. Allen F. Owen consul of the same for Havana, as it appears from the commission which he has exhibited, begging that I would be pleased to approve of it, in order that he may exercise the functions of said office, and to which I have assented: *Therefore*, I command the Captain-General of the island of Cuba and the other authorities whose duty it may be to see this my royal decree carried out, to receive and to recognize the aforesaid Mr. Allen F. Owen in the capacity of consul of the United States at Havana, in the form prescribed by the royal ordinance of the twenty-fourth of March, one thousand eight hundred and twenty-nine, and to permit him to enjoy and to exercise his functions; in doing which he is not to exercise any act of jurisdiction, being only allowed to interpose his arbitration in controversies which may occur between merchants and sea-faring people, with a view of reconciling them and of settling their differences. Under which condition, and *none other*, I grant him this my royal authority to perform the functions of said office; and to this effect, I order that he may be allowed to exercise the privileges and to receive the emoluments appertaining to the same, and that he may enjoy the exemptions, prerogatives and immunities compatible with the special law which is in force in that colony.

Given in Madrid, on the twelfth of August, one thousand eight hundred and fifty-one.

[L. s.]
(Countersigned)
THE MARQUIS MIRAFLORES.

I. THE QUEEN.

[Translation.]

OFFICE OF THE PRINCIPAL SECRETARY OF STATE,
The Palace, August 20, 1851.

MY DEAR SIR: Having informed the Queen, my mistress, of the note which you addressed to my predecessor, under date of the 7th of April last, transmitting the commission of Mr. Allen F. Owen, as Consul of the United States for the port of Havana, her Majesty has been pleased to give orders for the issuing of the Royal Exequatur, in the usual form, on the same condition as that which is imposed upon the consuls of all other nations in the colonial possessions of Spain,—that as soon as the authorities, at the respective points where said consuls reside, shall find out any of those functionaries to be engaged in promoting disturbances, disloyalty or disobedience to her Majesty, the Captain-General of the island may from that very fact, and at his own discretion, and without the necessity of instituting any proceedings in the case, suspend the person so offending, and even compel him to leave the island, without such an act being considered as an infringement of the respect due to the government which he serves.

For this reason I deem it expedient to point out to you the propriety of Mr. Allen F. Owen's making himself thoroughly acquainted with the nature and extent of his duties, at the point aforesaid, in taking possession of his office. Consuls being there considered as strictly commercial agents, they cannot be allowed to interfere in diplomatic matters, which are not within the pale of their legitimate sphere of action, nor to perform their functions without a proper regard to decorum and moderation. I hope that you will be pleased to communicate this remark to the party interested, whose estimable qualities lead her Majesty's government to believe that he will endeavor to avoid running into such excesses, which could not fail to produce serious misunderstandings with the authorities of the country, as past experience has unfortunately shown.

In consequence of the royal decision specified above, I have the honor of returning the aforesaid commission, advising you that, under this date, I forward the corresponding Exequatur to the Captain-General of said island, in order that the same may be duly carried into effect.

I avail myself with pleasure of this occasion, to renew to you the assurances of my most distinguished consideration.

I kiss your hand, and am your most obedient, faithful servant,

THE MARQUIS OF MIRAFLORES.

To the MINISTER PLENIPOTENTIARY
of the United States at this Court.

Mr. Owen to Mr. Crittenden, Acting Secretary of State.

[No. 26.]

CONSULATE OF THE UNITED STATES,
Havana, October 29, 1851.

SIR: I have the honor to transmit a copy of correspondence with the Governor and Captain-General relative to the arrest and imprisonment of Mr. John S. Thrasher. Mr. Thrasher is still incommunicated.

I have the honor to be your obedient servant,

A. F. OWEN.

HONORABLE J. J. CRITTENDEN,
Acting Secretary of State.

Mr. Owen to the Captain-General of Cuba.

CONSULATE OF THE UNITED STATES,
Havana, October 23, 1851.

SIR: It devolves upon me as a duty, to draw your Excellency's attention more particularly to the case of Mr. John S. Thrasher, a citizen of the United States residing in this city, and who was arrested, as I informed your Excellency I had learned, by order of the Government.

Your Excellency will recollect the interest I manifested in the release of Mr. Thrasher, and that he should have a fair trial, and that I might be present at the same and assist him as far as I should be able in the way of counsel and advice. Having now just been informed that Mr. Thrasher is incommunicated, I avail myself of the earliest moment to reiterate the views and wishes I had the honor to express in the personal interview with your Excellency.

Under *instructions* from my Government, I beg leave to state to your Excellency that while I am required to bear in mind that my duties are such as strictly belong to the consular character, and that the government of Spain has refused to consider the consular functions here as in any respect diplomatic, yet the Government of the United States requires the Consul to be vigilant in ascertaining who, among his countrymen in his consular district, are charged with crimes against the sovereignty of Spain, and to see that they have a fair trial.

I close by earnestly requesting your Excellency to allow Mr. Thrasher to be put in communication, and that I be permitted to see and converse with him relative to his case.

I have the honor to be your Excellency's obedient servant,
A. F. OWEN.

[Translation.]

The Captain General to Mr. Owen.

POLITICAL DEPARTMENT,
Havana, October 25, 1851.

SIR: In reply to your communication of the 23d instant, relative to the case of D. Juan S. Thrasher, I have to say, that it depends upon the decision of an independent tribunal whether or not proceedings shall be instituted in said case; and that in the event of the former course being adopted, such proceedings would be public, as it is customary under similar circumstances.

With regard to the duties which you say your government requires you to perform, while reminding you of the functions which belong to the consular character near other nations, I can only refer you to the explicit words contained in your *Regium Exequatur* on this point, which are as follows: "With which [the consular office] he is not to exercise any jurisdictional functions whatever, being only allowed to arbitrate in controversies which may occur between merchants and seafaring people, for the purpose of reconciling them and settling their differences."

With regard to the wishes which you have been pleased again to express

to me, to be allowed to visit Mr. Thrasher, remonstrating against the incommunicated condition in which he is, this being a matter under the exclusive control of the tribunals, there is no power vested in me to interfere with their action. As soon as the aforesaid tribunal shall have ordered that interdiction to be removed, you will be able to visit him.

Understanding as I do the kind of feelings which actuate you in behalf of Mr. Thrasher, I greatly regret, therefore, not being able to accede to your request as I would have wished to do.

May God preserve you for many years.

JOSE DE LA CONCHA.

To the CONSUL of the United States.

Mr. Owen to Mr. Webster.

[No. 28.]

CONSULATE OF THE UNITED STATES,
Havana, November 15, 1851.

SIR: I had the honor on the 29th ultimo to transmit a copy of a correspondence with the Governor and Captain-General of Cuba, relative to the case of Mr. John S. Thrasher, a citizen of the United States, residing in this city. I herewith have the honor to transmit you a duplicate of the same.

On the 12th instant Mr. Thrasher was tried for the crime, as the paper states, "de infidencia." The notice* of the trial in the government paper is herewith sent.

The "Fiscal," an officer of the government, has proposed that he be sentenced to eight years in the Presidio. The sentence has not yet been passed, so far as I can learn. It is said the court is to meet to-day.

The Governor or Captain-General has the power, I am informed, to revise the sentence if one shall be passed, and to approve or disapprove the same. I have addressed a note to the Governor respecting this matter, and when his answer is obtained I will forward the note and the reply to the State Department.

I have the honor to be, with great respect, your obedient servant,

A. F. OWEN.

HON. DANIEL WEBSTER,
Secretary of State.

Mr. Owen to Mr. Webster.

[No. 29.]

UNITED STATES CONSULATE,
Havana, November 17, 1851.

SIR: In the case of Mr. John S. Thrasher, I am informed and believe that the court have agreed to the proposition of the Fiscal, and that the

* OFFICIAL NOTICE OF NOVEMBER 11, 1851.

To-morrow the military commission will hold a public court-martial, for the purpose of examining and pronouncing judgment in the criminal proceedings which have been instituted against Mr. John S. Thrasher, who stands accused of the crime of treason; which act will take place in the pavilion of the first commandant of the regiment of Barcelona, situated in the quarter *de la Fuerza*.

sentence is eight years to the Presidio. The Captain-General has the power to revise the sentence and to approve or disapprove.

The mail bag is to be closed in a few minutes.

I have the honor to be, with great respect, your obedient servant,

A. F. OWEN.

HON. DANIEL WEBSTER,
Secretary of State.

Mr. Owen to Mr. Webster.

[No. 30.]

CONSULATE OF THE UNITED STATES,
Havana, November 25, 1851.

SIR: Herewith I have the honor to enclose duplicates of my communications Nos. 28 and 29, together with copies of several communications of Mr. John S. Thrasher to me, dated respectively the 7th, 8th and 15th instant; also copies of my communications to the Governor and Captain-General of the 12th, 15th, 16th and 21st instant, and copies of the Governor and Captain-General's letters to me in reply dated the 10th, and two of the 23d instant—all of them relative to the trial and sentence of Mr. John S. Thrasher.

In the letter from the Captain-General of the 23d instant, marked "received this day" (25th instant,) you will perceive that he declines to allow any interference on my part in behalf of Mr. Thrasher, such interference being, as he says, not within the consular functions. And he therein also asserts that he is a mere subordinate of the Spanish government, without the right to disturb the course of the laws established by the Spanish government for this island, it being his duty to comply with the decisions of the tribunals of justice.

The Captain-General said to the mother of Mr. Thrasher to-day, that her son would be sent to Spain on the 27th instant.

Mr. Thrasher requested me in writing to ask the Captain-General to commute his punishment of eight years to Ceuta (the Presidio) to banishment from the island, and I have done so, but have yet had no reply.

I have the honor to be, with great respect, your obedient servant,

A. F. OWEN.

HON. DANIEL WEBSTER,
Secretary of State.

Mr. Thrasher to Mr. Owen.

PUNTA CASTLE,
Havana, November 7, 1851.

DEAR SIR: I have just received an intimation from the commander of this fortress that I must inform my friends they will only be allowed to see me from the hour of twelve until that of two o'clock of the day. Besides the inconvenience of this part of the day, it being during the hottest portion of it, I must protest against this turning what can only be considered a measure of security for my person pending my trial into a punishment, the more severe from the fact that I have for eighteen days been debarred all communication with

my friends, and that not only my friendly relations, but my business and my pecuniary interests now require a more assiduous attention than under ordinary circumstances. I would therefore request you to address an urgent communication to his Excellency the Captain-General, requesting that the necessary orders may at once be given to the commander of this fortress, not only not to prevent my seeing and communicating with my friends at any hour of the day, as is the custom with other parties in confinement ere, but that no measures shall be taken here pending my sentence that shall in any way view me in the character of a criminal.

With a request that you will attend to this to-day, as to-morrow is Sunday, I have the honor to be, respectfully,

Your very obedient servant,

JOHN S. THRASHER.

A. F. OWEN, Esq., *Consul for U. S. A.*

Mr. Thrasher to Mr. Owen.

PUNTA FORTRESS,

Havana, November 8, 1851.

DEAR SIR:—I addressed you a few lines yesterday in regard to my friends not being allowed to see me except at the hours from twelve till two o'clock of the day, with a request that you would elevate the same to his Excellency the Captain-General. I have had the mortification to learn that the Commander of this fort has repeated that order to the guard of to-day, and that several of my friends have been refused permission to see me.

This is contrary to the usage in this fortress, where other prisoners are allowed to receive the visits of their friends during all hours of the day—it is contrary to justice thus punishing me, and in the most severe manner, to the prejudice of my interests, and the wounding of my feelings, before my trial has been concluded, and I must protest in the most urgent manner against it.

I beg you will to-day address another urgent communication to his Excellency, the Captain-General, requesting that this evil may be removed and not repeated, for I am well convinced it emanates from personal pique of the commander of the fort, and not from any demerits of my own.

Respectfully your very obedient servant,

J. S. THRASHER.

TO ALLEN F. OWEN, Esq.,

Consul for the U. S. A.

Mr. Thrasher to Mr. Owen.

PUNTA PRISON,

Havana, November 15, 1851.

DEAR SIR:—In a state of complete uncertainty as to the course my trial is taking since the presentation to the council of war of my solemn protest against judgment being entered without allowing me every fair and legal

means of defence, (which I herein do most solemnly aver has not been allowed me, my nominal defender or advocate never having in any manner consulted with me as to the best line of defence to adopt, nor even asked what counter-testimony I could bring forward, nor ever having consulted with my legal counsel as to the points of law) I find myself under the necessity, to secure justice, to request you to bring forward my rights as an American citizen, and to press, with all due firmness, upon the government my complete non-amenability to the charge of *treason* which they bring forward against me, the incongruity of trying me by a court martial in a time of profound peace, and the injustice of refusing me there a fair and free defence.

Besides the evident and well known state of the law in regard to white colonization in this island, by which domiciliary letters are granted to foreigners without affecting in any degree their allegiance to, and right of protection from their own government, and which domiciliary letters are essentially different in their nature from letters of naturalization, there exists in my own case a peculiar and significant fact, to which I beg leave to draw your attention, that you may bring it immediately before the government of this island, and our own if necessary.

About the middle of August of last year (1850) I rented, as a matter of speculation, the paper entitled "Faro Industrial de la Habana." I presented to the censorship an editor, other than myself, and who was a Spanish subject, and undertook myself only the printing and publication of the paper. For reasons best known to the government, an order was issued by the Captain-General, (which I would present here, but I was refused a copy thereof by the officer who made it known to me) by the which order I was prohibited to publish any paper in this island, unless I first took out letters of naturalization. Within the prescribed term I replied to the order in a memorial which I presented to the Captain-General, declining to take out letters of naturalization, and stating that I ceased to publish the paper, which from that time passed out of my hands. In this proceeding you will perceive there is a decided recognition on the part of the government, of my entire want of allegiance to her Catholic Majesty, and of the complete validity of my rights as an American citizen. Notwithstanding, I possessed at that time the same domiciliary letters under which they now pretend to a right to accuse, try, and sentence me as a Spanish subject, and I have not since then, by any act, or by the operation of any known law, lost my rights of nationality and allegiance to the United States of America.

I state these facts from memory merely, being in durance, and without facile access to my papers, and I am not certain but that the terms of the order to which I have referred, may not, in their wording, present the facts in a stronger light even than what I have placed them. I call upon you, therefore, as Consul of the United States, and representative here of our common country and government, to bring these facts forcibly and urgently to the knowledge of the government of Cuba; to protest firmly and energetically against the infringement of the rights of an American citizen in my person, and the denial of justice to me; and to ask from the Captain-General that there be accorded to me a proper and sufficient time to make my defence; that I be furnished with full copies of all the proceedings and evidence in my case, to the which I am entitled by law and by treaty; and that I may be freely furnished with copies of all documents that I may deem necessary to my perfect exculpation from the charges brought against me.

I must also request you to urge upon this government the incompatibility of considering me at one moment an American citizen, and at another a Spanish subject—the impossibility of my holding allegiance to two powers at the same moment; and that the government here having viewed me in the light of a foreigner, and as not holding the allegiance of a Spanish subject, allow me to prosecute my exculpation and defence against the charges now lying against me, with a full recognition of my rights as an American citizen.

From the information I can gather of the proceedings of the court in my case, I have reason to fear a hasty and unjust decision against me. I would, therefore, respectfully urge upon you immediate and energetic action in my behalf.

I have the honor to be your very obd't servant,

J. S. THRASHER.

To A. F. OWEN, Esq.,
Consul for the U. S. A.

Mr. Thrasher to Mr. Owen.

November 15, 1851.

DEAR SIR:—I have just received a private communication to the following effect: You are sentenced to eight years presidio—the auditor of war will approve it. Perhaps the Captain-General may reserve the right to alter the sentence, but I doubt it, as it has emanated from his will. It is said you will be sent to the quicksilver mines.”

You will see by this that there is but little time left, and it requires energetic action, as all steps after the sentence will be naturally attended with delay. Do me the favor to write strongly to the President, as I understand the New York steamer is delayed until to-morrow.

Respectfully yours,

J. S. THRASHER.

To A. F. OWEN, Esq.,
Consul for the U. S. A.

Mr. Owen to the Governor and Captain-General of Cuba.

CONSULATE OF THE UNITED STATES,
Havana, November 12, 1851.

SIR: I am requested by Mr. J. S. Thrasher to protest against the trial of his cause coming on to-day.

Mr. Thrasher informs me that the time allowed him to make a defence to the charges is not sufficient. He says that the two hours per day to have intercourse with friends has been too short, and that the military officer, whom he selected to defend him, has not consulted with the legal counsel whom he has chosen, and who is of his naming. He says that his counsel have only had twenty-four hours to examine the proceedings, including the evidence, which is much at length, and that after such examination, only one hour remained of the time allowed, and that it is wholly

insufficient to enable him to enter upon his defence to the charges against him.

Mr. Thrasher asks me, as the consul of the United States within whose jurisdiction he is, to offer this protest. I do not know how far your Excellency will allow me to proceed in this matter by protest, but I desire by this communication to secure such rights as belong to Mr. Thrasher, as an American citizen, under the treaty stipulations between the United States and the government of Spain.

I have the honor to be your Excellency's obedient servant,

A. F. OWEN.

His Excellency Señor DON JOSE DE LA CONCHA,
Governor and Captain-General of the Island of Cuba.

Mr. Owen to the Governor and Captain-General of the Island of Cuba.

CONSULATE OF THE UNITED STATES,

Havana, November 15, 1851.

SIR: MR. J. S. Thrasher is in a state of anxiety as to the course the cause against him is taking since his protest, in court, that the judgment should not be entered without allowing him every fair and legal means of defence, which he now avers has not been allowed him; saying that his defender or advocate never consulted him as to the best mode of defence, nor inquired of him what rebutting evidence he could bring, nor consulted the legal counsel of Mr. Thrasher as to the points of law involved.

I am requested by Mr. Thrasher to state to your Excellency, that as an American citizen, he is not amenable to the charge of *treason*, which he says is brought against him; and that he ought not in time of peace to be tried by a court-martial, wherein he has not been allowed a fair and free defence, as he insists. He requests me to state to your Excellency, that the law in regard to letters of domicil in Cuba does not affect, in any degree, the rights of a citizen of the United States, nor deprive him of his rights as such, and that letters of *domicil* are essentially different from letters of *naturalization*.

Mr. Thrasher requests me to draw your Excellency's attention to the refusal, in August, 1850, of the government here to allow him to publish the paper called the *Faro Industrial*, unless he would take out letters of naturalization, and that he presented, within the prescribed time, to your Excellency, a memorial in which he declined to take out letters of naturalization, and stating in the memorial that he had ceased to publish said paper. Mr. Thrasher requests me to say that this was a recognition of his rights as a citizen of the United States, and as showing that he was not then regarded as owing allegiance to her Catholic Majesty, the Queen of Spain, and that at that time he possessed the same letters of domicil under which the right to accuse, try, and sentence him is now held. He requests me to say that since that time he has done no act by which he has lost his rights, nor is he aware of any law, by the operation of which he has lost them.

Mr. Thrasher calls upon me, as the representative of the United States here, to bring these facts *fully* to the attention of your Excellency, and to protest against the infringement of the rights of a citizen of the United

States in his person, and of the denial of justice to him. He requests that your Excellency will allow him or cause to be allowed to him full and sufficient time to make his defence, and that he be furnished with full copies of all the proceedings and evidence in the case, to which he is entitled by law and by the treaty; and that he be furnished with all documents which he may deem necessary to his perfect exculpation from the charges brought against him. Mr. Thrasher requests me to draw your Excellency's attention to the incompatibility of his being regarded at one moment as a citizen of the United States, and at another a subject of Spain.

I desire to repeat to your Excellency, that my object in presenting these views, is to secure the rights of Mr. Thrasher as a citizen of the United States, which are his by law and treaty.

I have the honor to be your Excellency's obedient servant,

A. F. OWEN.

His Excellency Señor Don JOSE DE LA CONCHA,
Governor and Captain-General of the Island of Cuba.

Mr. Owen to the Governor and Captain-General of the Island of Cuba.

CONSULATE OF THE UNITED STATES,
Havana, November 16, 1851.

SIR: I am requested by Mr. Thrasher to ask and insist upon having a copy of the order of your Excellency relative to the publication of the paper called *Faro Industrial*. It was issued, he thinks, between the first and tenth of September, 1850.

Awaiting your Excellency's reply, I have the honor to be your Excellency's obedient servant,

A. F. OWEN.

His Excellency Señor Don JOSE DE LA CONCHA,
Governor and Captain-General of the Island of Cuba.

Mr. Owen to the Governor and Captain-General of the Island of Cuba.

CONSULATE OF THE UNITED STATES,
Havana, November 21, 1851.

SIR: About five o'clock P. M., I received from Mr. J. S. Thrasher, a note stating that the Fiscal had just been to the Punta and read to him his sentence, the same having been conformed to by your Excellency, of eight years to Ceuta. Mr. Thrasher requested to see me. I called at the prison immediately, when he suggested the propriety of my having an interview with your Excellency relative to his condemnation, which I shall be glad to have at the earliest hour it shall be convenient to your Excellency to receive my call for that purpose.

I have the honor to be your Excellency's obedient servant,

A. F. OWEN.

His Excellency Señor Don JOSE DE LA CONCHA,
Governor and Captain-General of the Island of Cuba.

[Translation.]

The Captain-General of Cuba to Mr. Owen.

[L. s.]

POLITICAL DEPARTMENT,
Havana, November 10, 1851.

I have received two communications from you, dated respectively the 8th and 9th inst., both relating to the anxiety which Don Juan S. Thrasher feels, that his friends may be permitted to visit him at the Punta fortress, where he is confined, at all hours of the day; in reply to which I must say to you that the hours between twelve and two o'clock in the day are those established for that purpose in the aforesaid fortress in regard to all those persons, who, like Thrasher, are in a communicated state, it being impossible, therefore, to alter such regulations.

May God preserve you many years.

JOSE DE LA CONCHA.

To the CONSUL of the United States.

[Translation.]

*The Captain-General to Mr. Owen.*POLITICAL DEPARTMENT,
Havana, November 23, 1851.

I send you, herewith enclosed, a permit to enable the mother of Don J. S. Thrasher to visit him in the Castle del Morro, where he is now confined until his departure thence to undergo his doom. I also enclose another for yourself, to enable you to see him whenever you may think it proper to do so; apprising you that, inasmuch as Don. J. S. Thrasher is already looked upon in the light of a convict, I forbid him, in view of that consideration, from writing any document without the consent of the commandant of the Castle del Morro, having caused three sealed letters, which his servant was taking out of the prison yesterday, to be stopped. You are, however, at liberty to see him, and to confer with him freely, at all hours when admission to that fortress is allowed, while Mr. Thrasher remains in this place.

May God preserve you many years.

JOSE DE LA CONCHA.

To the CONSUL of the United States.

[Translation.]

*The Captain-General of Cuba to Mr. Owen.*POLITICAL DEPARTMENT,
Havana, November 23, 1851.

You have been pleased to address me two communications, dated respectively the 12th and 15th instant, both having reference to the case of Mr. John S. Thrasher; and although all that is proposed in said letters, as

you remark, is to secure what the rights of Mr. J. S. Thrasher, as a citizen of the United States, demand, my duty will not permit me to enter into a discussion of the different points contained in them, in reply.

You are very well aware that consuls are nothing else than mere commercial agents, and I nothing more than a deputy of the Spanish government in this province, for the purpose of governing the same according to the laws and provisions which said government may think advisable to establish. The complaints and reclamations of Mr. J. S. Thrasher are therefore out of the sphere of those reclamations which, in the exercise of your consular functions, you might prefer, and my duty could never permit me to reply to them.

Mr. J. S. Thrasher complains through you, that certain rights, which he considers as inalienable from him, as a citizen of the United States, have been violated in his person when he was convicted by a court of justice, to which, according to the laws of this country, belongs the jurisdiction over all crimes of conspiracy against the State, of what he had been accused. Upon this subject, the only fit course for you to pursue is to address yourself to your Government, giving it such information as you may think just and proper relative to the sentence which has been pronounced against Mr. Thrasher; and if such intelligence as you may communicate should give place to any reclamation, the government of her Majesty, my queen, will attend to it with due consideration; my duty, in the meanwhile, being to see that the behests of the courts of justice established in this island, which has been entrusted to my command, are carried out.

May God preserve you many years.

JOSE DE LA CONCHA.

To the CONSUL of the United States.

Mr. Owen to Mr. Webster.

[No. 31.]

CONSULATE OF THE UNITED STATES,
Havana, November 27, 1851.

SIR: I have the honor to enclose to you herewith a duplicate of my communication No. 30, with copies of the papers that accompanied the original.

I now beg leave to lay before you a copy of my communication to the Captain-General, dated 23d November, referred to in my letter to you, asking, at Mr. Thrasher's request, for a commutation of his sentence. But his Excellency states in a letter to me, of which I have the honor to send you a copy, that it is not in his power to accede to the petition, and that no other resource is left for Mr. Thrasher but to apply to her Majesty, the Queen of Spain.

I have therefore presented to the Captain-General a petition of Mr. J. S. Thrasher, asking for copies of the proceedings against him, to submit to the Queen.

Mr. Thrasher has this morning left this port in a Spanish vessel bound to Vigo, in Spain.

I have the honor to be, sir, with great respect, your obedient servant,

A. F. OWEN.

Honorable DANIEL WEBSTER,
Secretary of State, Washington, D. C.

Mr. Owen to the Captain-General of Cuba.

CONSULATE OF THE UNITED STATES,
Havana, November 23, 1851.

SIR: I have received from Mr. J. S. Thrasher, a communication in writing, which bears date the 22d inst., in which he uses the following language: "Will you make interest with the Captain-General to have my sentence commuted to banishment from the country?"

As the Consul of the United States for Havana, within whose consular jurisdiction Mr. Thrasher is, I respectfully solicit from your Excellency the commutation of the sentence in this case, upon the terms mentioned by Mr. Thrasher, and which I have quoted above. By sending Mr. Thrasher from the country, it will put it out of his power (even if he desired such a thing) to intermeddle with the affairs of Cuba, and I trust it will meet your Excellency's views to accede to this request. If, however, it should not, I desire to request that your Excellency will give directions for a continuance of the kindness which has been shown to Mr. Thrasher since his arrest, imprisonment and trial, and which I assure your Excellency is acknowledged and appreciated by Mr. Thrasher and his friends.

I have the honor to be your Excellency's obedient servant,

A. F. OWEN.

His Excellency SEÑOR DON JOSE DE LA CONCHA,
Governor and Captain-General of Cuba, &c. &c. &c.

[Translation.]

[SEAL.]

POLITICAL DEPARTMENT,
Havana, November 25, 1851.

I have received your communication of the 23d instant, giving me a copy of the language used by the convict J. S. Thrasher, in the letter which he has addressed you, and which is as follows:—"Will you make interest with the Captain-General to have my sentence commuted to banishment from the country?"

It is not in my power to accede to this petition, nor yet to comply with the request which you make me, to the same effect, inasmuch as there is no authority vested in me for that purpose, the sentence having already been approved. For a person situated as the petitioner is, no other course is left for him to pursue, in order to obtain the boon which he solicits, but to apply to her Majesty, the Queen, my mistress.

May God preserve you for many years.

JOSE DE LA CONCHA.

To the CONSUL of the United States.

Mr. Webster to the Consul, or Acting Consul at Havana.

DEPARTMENT OF STATE,
Washington, November 12, 1851.

SIR:—This letter is addressed as below, from an apprehension that Mr. Owen may have left Havana before it shall arrive there. Its object is

to acknowledge the receipt of Mr. Owen's letter of the 29th ultimo, with its accompanying communication, being a letter to him from the Captain-General of the island respecting the arrest and imprisonment of J. S. Thrasher. The friends of Mr. Thrasher have written to this Department on that subject, and there are certain points or questions upon which it would be very desirable to have information. I should be glad to know how long Mr. Thrasher has resided in Havana, and what have been his business and pursuits, and, if practicable, to learn for what alleged offence he has been arrested and imprisoned. From the letter of the Captain-General to Mr. Owen, it may be perhaps inferred that on this latter inquiry information might be obtained by application to the tribunals. This Department will be obliged to you to transmit, at as early a day as possible, all that you can learn respecting this case, and to keep it advised of the progress of the proceedings against Mr. Thrasher.

I am, sir, &c.

DANIEL WEBSTER.

To the AMERICAN CONSUL,
Or the acting American Consul at Havana.

Mr. Webster to the Consul, or Acting Consul at Havana.

DEPARTMENT OF STATE,
Washington, November 28, 1851.

SIR: I wrote you on the 12th instant, respecting the case of Mr. J. S. Thrasher, a copy of which letter I herewith enclose, from the fear that the original may have miscarried. Very various and inconsistent accounts are circulated throughout the country respecting Mr. Thrasher and his case. Some of these accounts represent him as a citizen of the United States who had gone to Havana on affairs of business, and who was there illegally arrested by the Spanish authorities. Others represent him as having resided there but for a short time only; while others, again, say that he went to Havana with his father and family fifteen or twenty years ago; and that the family all settled and became domiciled in the island; that the father set up the business of a baker, which some of the sons have followed, and that none of the family have considered themselves occasional visitors at Havana, or residents there for a short time merely. It is important to know whether Mr. J. S. Thrasher is an American citizen, entitled to all the rights of protection belonging to such a citizen, or whether he has in fact expatriated himself and chosen another government and another home. You will lose no time in doing all you can towards ascertaining the circumstances of the case, and in transmitting the result to this Department.

I am, sir, &c.,

DANIEL WEBSTER.

To the AMERICAN CONSUL,
Or the acting American Consul at Havana.

Mr. Webster to Mr. Calderon.

DEPARTMENT OF STATE,
Washington, December 8, 1851.

SIR: Mr. John S. Thrasher, who is represented to be a citizen of the United States, has recently been tried at Havana on a charge of treason against her Catholic Majesty. This Department has addressed letters to the Consul of the United States there, for the purpose of ascertaining such facts as would be necessary to permit an opinion to be formed, whether he is entitled to the interposition of this Government. No answer to these letters has yet been received. If the proceedings in the case should have been communicated to you by the Captain-General of Cuba, a copy of them would be acceptable to this Department. If you should not have received, and do not shortly expect them, I will thank you to apply to him for them.

I avail myself of this occasion, sir, to offer to you a renewed assurance of my very distinguished consideration.

DANIEL WEBSTER.

To Señor Don A. CALDERON DE LA BARCA, &c., &c.

Mr. Calderon to Mr. Webster.

LEGATION OF SPAIN,
Washington, December 11, 1851.

SIR: The circumstance of the Captain-General of Cuba having recently written to me for my information concerning the proceedings against Mr. John S. Thrasher, enables me to comply with the request conveyed in your letter of the 8th instant. I enclose, therefore, a copy of his Excellency's communication, and avail myself of this occasion, sir, to offer you a renewed assurance of my very distinguished consideration.

A. CALDERON DE LA BARCA.

HON. DANIEL WEBSTER, &c., &c., &c.

[Translation.]

The Captain-General of Cuba to Mr. Calderon.

GOVERNMENT HOUSE AND OFFICE OF THE)
CAPTAIN-GENERAL OF THE ISLAND OF CUBA,)
Havana, November 28, 1851.

MOST EXCELLENT SIR: Don J. S. Thrasher, a native of the United States, accused of the crime of high treason or conspiracy, having been tried and sentenced by the tribunal of the military commission, I think it proper that your Excellency should be informed of the course of proceedings to which this trial has given place.

The military commission, as I have said before, has tried Mr. J. S. Thrasher, an American citizen, but for many years domiciled in this island, for the crime of conspiracy against the State, and sentenced him for eight

years at hard labor. As your Excellency will perceive by the subjoined documents, the aforesaid individual, through the medium of the consul, complains: First, that sufficient time was not allowed him to prepare his defence; that the officer of the army who defended him did not consult the lawyers he had selected; and that the advocate whose services that officer availed himself of, did not agree with him as to the mode of conducting the defence. Secondly, that he ought not to have been tried by a military commission in times of peace, and that he could not be charged with treason, as he was a citizen of the United States; and thirdly, that although he is domiciled, he had refused to be naturalized, and that for this reason he had been prohibited from continuing the "Faro," a journal which he had been publishing in this city. Such is the total amount of grievances, reduced to the simplest mode of expression, of which Mr. Thrasher complains. It is extremely easy to reply to them.

The tribunal known by the name of military commission has, like all the rest, certain forms of proceedings previously established by law; these forms are brief, because the nature of the crimes over which it has jurisdiction requires that they should be so; they however afford sufficient guaranty to the persons accused. This brevity of forms requires that the arguments should be short, and that there shall not be any lawyers admitted, to introduce into these trials the same habit of sluggishness which has been carried into the proceedings of common and ordinary suits at law. In the case of Mr. Thrasher, all the forms employed by the military commission have been scrupulously observed. He selected of his own free will whichever officer of the army he preferred, to conduct his defence, and the latter had access to the proceedings whenever he deemed it necessary, took abstracts of the same, conferred with his client, and assisted, as well as Mr. Thrasher, at the trial of the case, and read on the occasion a large manuscript of defence, which the judges had fully taken into consideration when they pronounced his sentence.

I do not know whether that officer did or did not consult with the lawyer selected by Mr. Thrasher, and I am likewise ignorant of the fact, whether the individual who was entrusted with the confidence of the former conferred with the latter as to the means of defence; but even if this had been the case, inasmuch as lawyers are not admitted to plead in these trials, the officer designated by the accused having to discharge the duty of conducting the defence, any consultation with advocates on the part of the latter is a spontaneous act, for his own better information, and he may therefore select whom he prefers best. Above all, the most conclusive proof in justification of this tribunal is the publicity which is given to all its acts. The trial of Mr. Thrasher's case was witnessed by himself, by the consul of the United States, and by an immense concourse of people, who bear unanimous witness to the scrupulous exactness with which all the forms were observed, as well as to the freedom and amplitude of defence granted to the accused, and to the mildness of the punishment imposed, considering the nature of his crime. It is said that he ought not to have been tried by a military commission in times of peace. This is an error which probably owes its origin to the name by which this tribunal is designated. The military commission established in this island since the year 1825, is a common and ordinary tribunal for the trial of such crimes as may be committed against the State. It was therefore the only authority competent to pass judgment upon Mr. Thrasher, who stood accused of conspi-

racy, and the latter could not have been tried by any other tribunal without manifest violation of the laws by which we are governed. Mr. Thrasher, who was formerly editor of the *Faro*, a literary, political, and domestic paper, could not have been ignorant of the truth of this assertion and having offended against the State, he knowingly subjected himself to the jurisdiction of the military commission. It is added, that as a citizen of the United States he could not have been indicted for treason. This is so singular a doctrine, that I ought not to stop to refute it. I will do so, nevertheless; not without previously remarking, that if Mr. Thrasher considers this doctrine a rightful one, there can be nothing strange, in fact, in his having become a conspirator. "Protection is due to foreigners," says James Kent, in his *Commentaries on American Law*, vol. I., p. 35, "but they are bound to obey the laws of the country, and are amenable to its tribunals for infractions of the law." If in the United States foreigners are bound to respect the laws, and in case of their violating those laws they are liable to be tried and punished by the tribunals of the country, what right has Mr. Thrasher to expect, in his capacity of American citizen, to be beyond the reach of the law which in this country is applied for the punishment of traitors? What would become of public tranquillity if foreigners were permitted to enter into conspiracies unrestrained? On the 27th of October, 1795, a treaty was concluded between Spain and the United States, in the seventh article of which Mr. Thrasher pretends to find matter to sustain his complaints. It runs thus: "And in all cases of detention or arrest for debts contracted or offences committed by any citizen or subject of one of the contracting parties, within the jurisdiction of the other, the same shall be prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases." Consequently, American citizens are here responsible in the same way that Spanish subjects are responsible in the United States, for the offences or crimes which they may commit, and that responsibility is rendered effective by the tribunals, and according to the regular course of proceedings usual in such cases. Is there, by chance, any greater offence or crime than that of treason? The American who conspires to overthrow the government of this country—who repays the hospitality and protection which it has extended to him by endeavoring to destroy it—is therefore bound to answer before the tribunal for the offence which by so doing he may have committed, according to the regular course of proceedings usual in such cases. And which is the tribunal, (I return again to demonstrate the competency of the military commission,) and what has been the course of proceedings adopted in Mr. Thrasher's case, which is one of conspiracy against the State? The military commission and its forms of proceedings, which have been scrupulously observed in his trial. Hence he has no cause either to repel the charge of treason, or to pretend that he ought to have been tried by other judges, or to have gone through a different course of proceedings than that which was pursued.

It is true, that by this very article the parties interested are allowed to employ such advocates, solicitors, notaries, agents or factors as they may judge proper; and it may be that Mr. Thrasher has inferred from these words in the article in question, that he had a right to select an advocate. But who is there so ignorant as not to know that these words have reference to such matters or suits at law, in which such functionaries are required by the established course of proceedings? There are cases which need the

instrumentality of agents or factors, and others which require the intervention of advocates, attorneys and notaries. The article provides, that whenever either of the parties require such aid, the selection of the individual shall belong to the Spanish subject in the United States, and, in Spain, to the American citizen. But when the course of proceedings usually pursued in such cases forbids the intervention of advocates, attorneys and notaries, as it is the case with the military commission, in regard to all crimes of conspiracy over which it has jurisdiction, there is no selection, and no right to that effect can possibly exist. The forms of proceedings in this court do indeed require the intervention of an officer to conduct the defence; the accused has a right to employ one, and let Mr. Thrasher say whether, in the exercise of this right, he was not perfectly free.

I likewise enclose to your Excellency the written opinion which I solicited from the Royal Court of Judicature (Real Audiencia Pretorial) of this place, asking to be informed as to the true meaning of the above-mentioned article of the treaty; which paper will show to your Excellency that the article is only applicable to civil affairs and not to criminal matters, in regard to which foreigners are obliged to submit to the jurisdiction of the country where they live.

Let it be granted by all means, (and I will now reply to the last of his unfounded complaints) that Mr. Thrasher has not been naturalized in this country; what will he gain by that? Even if he were simply an American citizen he could not better his position; for, as it has already been shown, he was as such obliged to respect our laws, and his infraction of those laws rendered him amenable to the tribunals which have been established for punishing the same. But Mr. Thrasher was something more than simply an American citizen, for he had become domiciled in the island. In order that your Excellency may the better understand the duties appertaining to his position as a domiciled foreigner, I will state that, according to our laws, there are three classes of foreigners; viz: transient, domiciled and naturalized. The first named are entitled to protection and are bound to obey the laws in the manner hitherto specified. Those of the second class may acquire property with an exemption of taxes and excise duties, and exercise certain callings and professions; but in return they are obliged to take the oath of allegiance and vassalage before the governor, promising to obey the laws and the general regulations of the Indies, to which all Spaniards are subject. And those of the third class enjoy the same rights, and are bound by the same obligations as the natives.

Such are the provisions of the first, second, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth articles of the royal decree of October 21, 1817.

Having given this explanation, your Excellency will easily perceive that, even if Mr. Thrasher had been considered simply in the light of a foreigner, he had no right to complain as has been shown, in consequence of having been tried and sentenced as a conspirator by the military commission. How much greater the cause for considering his complaints as unfounded, when it is remembered that he was a domiciled foreigner. In assuming this character of his own free will, he swore to be faithful to our government; and in return he enjoyed certain rights and privileges, which as simply a foreigner he could not have possessed. Will Mr. Thrasher still say that he cannot be charged with treason? The fact of his having been compelled to discontinue the publication of the "Faro" for want of natu-

ralization, is of no importance. It has already been said that domiciled foreigners are allowed to exercise certain callings and professions, and those that are naturalized, all. Among the former, the privilege of publishing political newspapers is not and could not be comprised without manifest danger to public security. Nor is this privilege granted to all Spaniards now, because the circumstances of this island require that the government should exercise the utmost circumspection on this point. How then could that privilege have been extended to domiciled foreigners, and much less to a citizen of that country whence the piratical expeditions had sailed?

I think that what I have said, together with such other reflections as cannot fail to present themselves to the enlightened mind of your Excellency, will suffice, undoubtedly, to give ample satisfaction to all the reclamations which the government of the Union may address to you on the subject; reminding you, moreover, that this is the first case of the kind that has occurred in this island, and that it relates to an individual who has been for a long time branded by public opinion as the instigator and promoter of conspiracies for the purpose of overthrowing the order of things, being notoriously known as the correspondent of filibuster journals published in the United States, and for being connected with all those that are disaffected towards the government. Even his own countrymen acknowledge the justice of the sentence, since his revolutionary sentiments and tendencies were manifest to all.

God preserve you, &c.,

JOSE DE LA CONCHA.

The most excellent, the MINISTER PLENIPOTENTIARY
of her Majesty, in Washington.

[Translation.]

GOVERNMENT HOUSE AND OFFICE OF THE
CAPTAIN-GENERAL OF THE ISLAND OF CUBA,
October 20, 1851.

MOST EXCELLENT SIR:—It being proper, in order to subserve the best interests of her Majesty, that, in all such cases where the seventh article of the treaty of friendship between her Majesty and the republic of the United States, signed at San Lorenzo el Rial, on the 27th October, 1795, is applicable, in regard to citizens of said republic, there should not be the slightest difficulty as to the proper mode of proceeding, it has appeared to me, that it would be expedient to obtain the considered opinion of the royal court of judicature, by means of which, besides imparting to me the true meaning of the article aforesaid, I also desire to be informed, whether, in case of any criminal proceedings being instituted against any native of the United States for the crime of treason, who may be domiciled, or a resident of this island, the provisions of that same article can give occasion for any pretext to change the natural order of things, in the established forms of the permanent, executive, military commission, to which tribunal belongs the jurisdiction over all such crimes.

God, etc.

To the PRESIDENT OF THE ROYAL COURT OF JUDICATURE,
(*Audiencia Pretorial.*)

OFFICE OF THE PRESIDENT OF THE ROYAL COURT
OF JUDICATURE OF HAVANA,
October 20, 1851.

MOST EXCELLENT SIR:—I place into the hands of your excellency a certified copy of the declarations made by the Fiscals, and the unanimous opinion of the royal court of judicature, in pursuance to your excellency's request to that effect, relative to the application of the seventh article of the treaty of friendship between her Majesty and the republic of the United States, in regard to the subjects of said republic, which is my reply to your communication mentioned above.

God, etc.

Most excellent sir,

PEDRO PIZARRO.

Havana, October 20, 1851.

MOST ESTEEMED SIR: The Fiscals beg leave to state—His lordship, the president, with a view of avoiding any difficulties in the mode of proceeding, wishes to know the opinion of this royal court of judicature in regard to the true meaning of the seventh article of the treaty of friendship between her Majesty and the republic of the United States, signed at San Lorenzo el Real, on the 27th of October, 1795; and, especially, if in case of any proceedings being instituted, for the crime of treason, against any native of the United States who may be domiciled, or a resident of this island, whether that article could give occasion for pretext, on the part of any person, to change the natural order of things in the established forms of the permanent, executive, military commission of this place, which is the competent tribunal of the country for taking cognizance of such crimes. The Fiscals can very easily satisfy, on their part, the wishes of the president; first, making a few remarks, in regard to the class of foreigners who may, in general, reside among us at the present time. And if the Fiscals have to refer to the actual state of things, it is because, in former times, no foreigners were allowed access to the Indies; while, at the present day, since the introduction of immunities in trade and the admission of all kinds of people, the subjects of other nations constitute already a very considerable portion of our society. The latter may be divided into three classes, or be simply designated as *transient*, or *domiciled*, or *naturalized*.

The first mentioned preserve many ties with the country whence they came; but in the peninsula they enjoy certain alien privileges, because this was suited to the relations of the mother country, with the nations to which they belonged. In the Indies there are no such alien privileges, because they were derived from treaties which had not been extended to these colonies; and, on that account, here they are subject to the laws of the country, and liable to be tried before the local tribunals by their respective judges. And it is not here alone that these regulations are in force; for, it may well be said that it is a principle of the common law of nations, that a foreigner of this class ought to be punished where he commits a crime, and to be formally tried before he receives that punishment. If all communities did not possess this right, they would be in want of a great conservative element, inasmuch as they might be warred against by foreigners, without

having any means of defence within themselves. If a foreigner of the class called transient, commits the crime of treason in these regions, he cannot avoid being amenable to the regular tribunals which ought to take cognizance, and which do exercise jurisdiction over this species of crimes. The other class of foreigners is that which is denominated *domiciled*; and these, in order to become entitled to such a character, are obliged to declare their intention of establishing themselves in the island, to profess the Roman Catholic religion; and then the name of the individual, that of his country, his family and profession, are formally registered; before the letter of domicile is issued to him, he must take the *oath of allegiance and submission*, promising *to obey the laws and ordinances, to which all Spaniards are amenable*, according to the provisions of the fourth article of the royal decree of October 21, 1817, relative to the increase of the white population in the island. Domiciled foreigners, therefore, are subject to the laws and ordinances; and with regard to the class styled *naturalized* foreigners, the Fiscals have little or nothing to say, because the latter have broken asunder all the ties which bound them to the land of their birth, and are looked upon and considered as Spaniards in the full legal acceptation of that term.

This classification being established, it will be easy now to solve the question which has been proposed by the President, seeing that the seventh article of the treaty alluded to respects those conservative principles which have already been pointed out, and can fully elucidate the same, in case any doubt should exist in regard to them; the article says, "that in all cases of seizure, detention or arrest for debts contracted or offences committed by any citizen or subject of one of the contracting parties within the jurisdiction of the other, the same shall be prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases." By the very language of this treaty, according to the article itself, and in the opinion of the Fiscals, foreigners are amenable to the competent tribunals, without there being any occasion for changing the regular course of proceedings, or for infringing upon any of the forms. The article allows also citizens and subjects of both parties to employ such advocates, solicitors, notaries, agents and factors as they may judge proper in all their affairs, and the latter are likewise allowed free access to the proceedings in the trial of causes, and to be present at the taking of all examinations and evidence which may be exhibited during said trials. The treaty is properly worded, because, in civil matters, foreigners are never prohibited from employing such advocates and agents as they may think fit, nor the latter from interfering in those actions where their presence is required; and this is likewise the case in criminal trials; in the latter, however, there is a particular course of proceedings; in cases of high treason, there is a military process which, although complete and open, upon the whole does never allow the interference of attorneys and advocates, because, on such occasions, there is substituted in lieu of these, the intervention of a person to conduct the defence, designated by the culprit, and this defender has certain powers defined by the law, time and occasion to present himself, and to discharge his obligations; and it is very certain that, among us, no foreigner can be deprived of this legal guaranty.

In the military courts of judicature, *this is the regular course of proceedings pursued in similar cases*; to which, according to the provision of the seventh article, citizens of the United States who commit crimes of high trea-

son in this country must submit. On the other side, Spanish subjects will be tried in the North American confederacy, by the tribunals of that country, and in conformity with the laws and ordinances which are in force there; because the treaty is reciprocal, and the law applicable alike to the subjects and citizens of either of the contracting parties. This is the natural and true meaning of the seventh article, which grants the same right to North American citizens that belong in substance to the Spanish citizen, viz:— that of being tried by the constituted tribunal of the country, and according to the ordinary course of proceedings defined by the laws and royal ordinances, without any one having the least right to change the order of things in the established forms of the permanent, executive, military commission of this island, and this the royal court of judicature considers as the most suitable reply that could be given to the inquiries of the Governor President.

ALANETA OLIVARES, revised.—Let the opinion of the court asked by the President, which entirely agrees with the statement made by the Fiscals, be issued, together with a certified copy of their opinion and of this decree. The same were accordingly signed and revised by the judges whose names appear in the margin, in Havana, the 20th of October, 1851. It is signed by the President Carbonell, Messrs. Birelta, Escorsura, Ochor, Osés, Antón Maria del Rio.

The above is a true copy of the originals which are on file concerning the matter to which they relate, and to which I testify: and in pursuance of the order contained in the above decree, I caused these presents to be drawn out in Havana, on the twentieth day of October, one thousand eight hundred and fifty-two.

ANTONIO MARIA DEL RIO.

To the most Excellent PRESIDENT, GOVERNOR and CAPTAIN-GENERAL.

Mr. Webster to Mr. Barringer.

DEPARTMENT OF STATE,
Washington, December 13, 1851.

[No. 50.]

SIR: The object of this despatch is to call your attention particularly to the case of John S. Thrasher, a native-born citizen of the United States, but for some years past a resident in Havana, and there lately tried for high treason, or conspiracy, convicted and sentenced to eight years confinement at hard labor, and sent to Spain in execution of that sentence. He has respectable friends and connexions in the United States, who feel much interest for him, and who have pressed his case upon the consideration of this department, earnestly invoking the interposition of the Government in his behalf.

It is much to be regretted that Mr. Thrasher has made no communication whatever to this department respecting the circumstances of his case, so as to enable us to see what are the precise grounds of his complaint. We have used all the means in our power to learn the particulars, as you will perceive, by copies of two letters addressed by this department to the American Consul at Havana. To these letters we have received as yet no answer. A despatch on this subject was prepared for you some days ago, but before it was delivered to the messenger, a communication was received from Mr. Calderon, her Majesty's plenipotentiary here, communicating a copy of a

letter of the Governor-General of Cuba to him, and also an opinion of the Court Real Audiencia Pretorias (Royal Court of Judicature) upon the construction of the seventh article of the Treaty between the United States and Spain. The translation of these documents has necessarily caused some delay. You will perceive that the Spanish authorities of the island represent that Mr. Thrasher had been long a resident in Havana; had become domiciled there, and had taken the oath of allegiance to the Spanish crown; and therefore, as they suppose, was answerable to the ordinary tribunals of the country for any criminal act committed by him.

This causes it to be the more regretted that he has made no communication to the Government of his own case, as he understands it. He has indeed addressed a general letter of remonstrance, through the press, to the Government and people of the United States, and this is all we hear from him personally. Nevertheless, his case has been thought deserving of attention, and there is a disposition in the Government to do all which may be proper in his behalf. If the official account of the Spanish authorities be correct, Mr. Thrasher appears to have expatriated himself, and to have become, at least for the time, a subject of the crown of Spain. He had chosen a new government and a new home; and so long as he chose to remain under the authority and protection of that government, he would seem to have little right to set up against it any immunity, founded on his original and native character as a citizen of the United States. There is no doubt that any one who chooses to reside in a country is bound to conform to its laws, and is amenable to its tribunals for their violation. The more especially, if he has promised subjection and obedience to those laws, and taken an oath of allegiance to the sovereign power.

Mr. Thrasher's friends insist, nevertheless, that on his trial he was deprived of certain privileges secured to citizens of the United States by the seventh article of our treaty with Spain, of 1795. But it may be doubtful, whether, after having sworn allegiance to the Spanish government, he can longer claim the privileges and immunities of an American citizen. In the United States, as you know, the oath of allegiance is the consummation of the proceedings by which a foreigner born becomes a citizen of this country, and renounces all allegiance to any foreign government. It may be doubtful, also, whether, if he were to be regarded in all respects as an American citizen, the provisions of the seventh article of the treaty of 1795 have been violated in his case.

Probably, under existing circumstances, the most useful course for the Government of the United States to pursue, in his behalf, and in order to obtain his release, is to make the same application for him which has been made in favor of the persons connected with the expedition of Lopez, who have in like manner been sent to Spain. His case, however, is certainly less flagrant than theirs. They were violent invaders, proceeding to Cuba with arms in their hands, to make war upon the Spanish government and people. He, at most, could be only guilty of some connivance or secret countenance of these unlawful proceedings; and, as his friends represent the matter, his conduct was principally instigated, not so much by sympathy with the invaders in their general objects, as by a desire to minister to their necessities. You will perceive, therefore, that his case is one more fit for a lenient consideration than that of those with whom the project of invasion originated, and who were made prisoners in attempting its forcible ex-

ecution. You will present this point as fully as may be to the consideration of the Queen's government, and urge it with earnestness.

In the instructions of this department, No. 48, considerations were presented which it was hoped would prevail on that government to release those persons who had been taken prisoners in the expedition of Lopez. The expectation that such a release would be ordered, is now a good deal strengthened by information which the Department has received that those of the prisoners who were British subjects have already been liberated.

Mr. Thrasher is represented as an amiable and intelligent man, and his friends think that he could have intended to do no more than to administer relief to the necessities of the prisoners. We cannot judge of this because we had neither any proof nor any statement of the particular acts, in which the alleged treason or conspiracy consisted. But however this may be, you will present to her Catholic Majesty's government in as strong a manner as may be consistent with propriety, the expediency of pardoning him with the rest, so that nothing may remain in the form of lingering punishment of an individual to keep alive the recollections of occurrences equally lamented by both governments. The unthinking and imprudent have been most severely admonished by events; those who violated the law have seen that punishment always awaits such violation, and we may be allowed to hope that the exercise on the part of her Majesty's government of forbearance and clemency, will not tend to encourage criminal enterprises in future.

Her Majesty's government cannot doubt the motives which have actuated that of the United States in preventing and repressing, to the utmost of its power, these invasions of Spanish territories. It cannot doubt its full and perfect disposition to fulfill all its obligations, and to maintain with Spain the most friendly relations. And the President directs me to say, that he hopes that her Majesty's government, being thus fully assured of the entire good faith of that of the United States, will willingly listen to the suggestions which I have been directed to make in behalf of all the prisoners; and I repeat, with a still more strengthened conviction, the sentiment which I expressed in my despatch No. 48, that the restoration of perfect harmony and solid and durable peace between the two countries, will be aided and promoted by the release of all these miserable men from further imprisonment.

With a view to its safety and despatch, this instruction is sent to you by a special bearer.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

DANIEL M. BARRINGER, Esq.,
&c., &c., &c., *Madrid.*